

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

DEANNA C. BUTTRAM, et al,)	
)	
Plaintiffs,)	Civil Case No. 96-0324-S-BLW
)	(Consolidated with)
v.)	Civil Case No. 96-0452-S-BLW
)	Civil Case No. 97-0129-S-BLW
UNITED STATES OF AMERICA,)	
)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
Defendant.)	
_____)	

INTRODUCTION

William Buttram and Joshua Oliver lost their lives fighting a wildfire known as the Point Fire. Their families, the plaintiffs in this consolidated action, claim that the agency supervising the firefighters, the Bureau of Land Management (BLM), is responsible for the deaths. The plaintiffs brought suit under the Federal Tort Claims Act, challenging a broad range of decisions made by the BLM. The Court held a court trial beginning on December 7, 1998, and ending December 15, 1998. The Court received the final post-trial briefs on January 26, 1999.

On the basis of the evidence and legal argument, the Court finds that the BLM and the Kuna Rural Fire District (Kuna RFD) both committed negligence that was the proximate cause of the deaths of Buttram and Oliver. The Court finds that the Kuna RFD bears 65% of the responsibility and that the BLM bears 35% of the responsibility. The Court's damage award is set forth in detail at the end of this decision. The findings of fact and conclusions of law supporting this decision are set out below.

FINDINGS OF FACT

1. Late in the afternoon of July 28, 1995, lightning sparked a fire in the dry grasses and sagebrush desert land about 16 miles southwest of Boise, Idaho.
2. The fire was burning on BLM land, and BLM fire crews responded.
3. The first BLM crew to reach the fire was headed by David Kerby who, by virtue of being the first crew chief to reach the fire, was designated as the Incident Commander, the person with overall responsibility for fighting the fire. Other crews soon followed. The fire became known as the Point Fire.
4. Kerby's decisions as Incident Commander (I.C.) would be guided by BLM fire suppression policies that depended in part on the fire's location. The Point Fire was burning near the Snake River Birds of Prey National Conservation Area, a 500,000 acre sanctuary for the largest concentration of raptors in the world. To protect the birds, the BLM had made a policy decision years earlier to "aggressively attack and suppress all wildfires" in this area. That policy is contained in the BLM's Boise District Fire Management Activity Plan (FMAP).¹
5. The FMAP also played an important role in determining what resources Kerby had to work with in fighting the fire. The FMAP includes a Lightning Operations Plan

¹ The FMAP is the result of a bottom-up process of developing fire management plans within the BLM. These plans were developed first at the District level and then consolidated into state-wide plans that were in turn consolidated into a BLM National Plan. The Boise District FMAP was completed in July of 1994. It was consolidated into the BLM's Idaho FMAP, which was completed in January, 1995, and approved by the BLM in March, 1996. Two other plans relevant to the Point Fire were the BLM's Lower Snake River Ecosystem Fire Preparedness Plan, issued in June, 1995, and the South Canyon Fire Abatement Plan issued in May, 1995. Further guidance that was available at the time of the Point Fire was contained in two publications of the National Wildfire Coordinating Group (NWCG): (1) The Fireline Handbook, a "nuts and bolts" pocket field guide for firefighting techniques; and (2) The Wildland Fire Qualifications Subsystem, a set of standards for training. The NWCG is a collection of federal agencies, including the BLM, and the National Association of State Foresters.

that is triggered when lightning fires are occurring, and was in effect during the Point Fire.

6. The Lightning Operations Plan describes the resources that should be made available for different types of lightning-caused fires, and provides a guide for rating the severity of the fire. The rating system--known as the "Burning Index"--rates fires on a numerical scale depicting the amount of effort needed to contain the fire given the time of year, fuel conditions, and other factors. The Burning Index increases as the days become hotter and the fuel conditions become more incendiary. The higher the Burning Index number, the greater the resources that should be made available to fight the fire. For example, a fire with a Burning Index between 0 and 34, burning early or late in the fire season, would be rated as a Response Level I fire, and the FMAP dictates that the "the typical response would be a single unit or crew and a detection aircraft, if available." Another section of the FMAP also recommends that two fire engines be dispatched along with the detection aircraft.
7. The Point Fire was burning during the summer fire season, with temperatures near the high 90s. Because of higher-than-normal spring moisture, cheatgrass growth was especially dense and mature sagebrush added to the fuel load.
8. The fire was caused by dry-lightning, and the National Weather Service in Boise had forecast--both the day before and the morning of July 28, 1995--that "gusty erratic winds to 55 MPH" could be "near any thunderstorms."
9. At noon on July 28, 1995, before the Point Fire began, the National Weather Service in Boise issued a "Fire Weather Watch" for dry lightning, and forecast that

thunderstorms would be moving through western Idaho "late this afternoon and tonight."

10. Given these factors, the Fire Management Specialist with the BLM, William Casey Jr., gave the Point Fire a Burning Index of 31, requiring the implementation of a Response Level I.
11. In fact, the BLM deployed even more resources to the Point Fire than would be called for in a Response Level I fire with a Burning Index of 31. The BLM dispatched five engines, a bulldozer, a tender, and a detection helicopter.
12. IC David Kerby arrived at the fire at 7:00 p.m.
13. Upon arriving, IC Kerby examined the fire from the ground, and then went up in a BLM helicopter to get an aerial view.
14. Shortly after IC Kerby returned from his helicopter tour, the Kuna RFD's Fire Chief, Richard W. Cromwell, contacted Kerby and asked him if he needed any assistance. Kerby responded that he could use a brush truck and a water tender. Cromwell responded that he would comply with that request.
15. A brush truck is a four-wheel drive vehicle designed to work directly on the fire line of a wildland fire. It carries 1,500 gallons of water, and has nozzles attached to the front bumper that the driver can operate from inside the vehicle to spray water on the fire. There is also a hose that can be manually operated at the rear of the vehicle.
16. A water tender, on the other hand, is not designed to attack fires, but is rather a mobile water reservoir. It contains a larger water tank, about 2,500 gallons, and is

typically stationed away from the fire line to permit the brush trucks to refill their tanks.

17. The Kuna RFD identified their vehicles by number. The brush trucks were 620 and 622, and the tender was 625.
18. In response to IC Kerby's request, Kuna RFD Chief Cromwell radioed Kuna RFD Captain Doyle McPherson and told him to (1) respond to the Point Fire with two brush trucks and a water tender; (2) to assume command of the Kuna firefighters who responded; and (3) to instruct the occupants of the two brush trucks to keep their trucks together.
19. McPherson said he would do so, but questioned Cromwell whether Cromwell also wanted to send Kuna's squad cars. The squad cars were smaller than the brush trucks, but were also equipped with water tanks. In an earlier conversation Cromwell told McPherson that the squad cars should be deployed with the brush trucks to provide a safety backup. But on this occasion, Cromwell told McPherson not to deploy the squad cars.
20. As of July 28, 1995, the chain of command at the Kuna RFD was, in order of authority, as follows: (1) Chief Cromwell; (2) Assistant Chief Darwin Taylor; (3) Captain McPherson; and (4) Captain Joseph Steer.
21. Under Kuna RFD policies, a firefighter was qualified to drive a vehicle as soon as he had learned to operate the vehicle.
22. The typical assignment was two firefighters per vehicle. The Kuna RFD leadership did not assign certain firefighters to certain trucks. The pairings were random; the

first two fire fighters who could get in a vehicle were a team, assuming one was qualified to drive.

23. Bill Buttram and Josh Oliver, both volunteer firefighters, took truck 620.
24. Buttram was qualified to drive and he took the driver's seat while Oliver took the passenger seat. McPherson was also a passenger.
25. Buttram started as a volunteer fireman with the Kuna RFD in October of 1994, nine months prior to the Point Fire. Buttram did not, however, have nine months of experience fighting wildfires by the time of the Point Fire. The fire season is May through September, and thus Buttram largely missed the 1994 fire season; the 1995 fire season was his first wildfire season.
26. At the time of the Point Fire, Buttram was 31 years old, and was employed by the Idaho Department of Corrections as a prison guard earning \$28,273 (on an annualized basis).
27. Oliver started as a volunteer fireman with the Kuna RFD in October of 1994, and was also experiencing his first wildfire season when he responded to the Point Fire. He was 18 years old at the time of the Point Fire.
28. Before Buttram, Oliver, and McPherson left the station in truck 620, they heard Chief Cromwell tell them over the radio (1) that truck 620 should stay together with truck 622, and (2) that when they arrived at the fire site, they should "switch to channel 16 [the BLM radio channel], and talk to BLM and find out where they want you."
29. The BLM was communicating by radio over channel 16, also known as the BLM channel.

30. Responding in truck 622 were volunteer firefighters Michael Law and Robert Black. Law had worked as a volunteer fireman since 1976; Black since 1970.
31. Responding in the tender truck 625 were Captain Joseph Stear and Jenny Taylor. Captain Stear had more than a decade of experience while Taylor had very little experience.
32. Captain McPherson testified that he would have liked more experience in truck 620, but he felt that Buttram and Oliver were qualified and so did not make any truck assignment changes.
33. The Kuna vehicles reached the Point Fire at about 7:30 p.m. They met together on Swan Falls Road about 1000 feet from the northeast perimeter of the fire, where Captain McPherson gave them a briefing.
34. In the briefing, Captain McPherson repeated Chief Cromwell's admonitions for 620 and 622 to stay together, and for all Kuna personnel to take orders from the BLM IC. Captain McPherson told them to maintain radio contact with the BLM, to stay in safe zones, to get into the black burned-out areas if there was any trouble, and to be aware of escape routes.
35. Captain McPherson then told 620 and 622 to proceed north on Swan Falls Road and find out what the BLM IC wanted them to do.
36. Captain McPherson decided to stay with the water tender, 625.
37. Immediately after 620 and 622 left the initial staging area, Captain McPherson discovered that tender 625's radio was not capable of reaching BLM channel 16.

38. Chief Cromwell was also not monitoring BLM channel 16.²
39. Thus, the only channel that Captain McPherson could monitor and transmit messages over was the Kuna channel, and the only channel that Chief Cromwell was monitoring was the Kuna channel.
40. The radios on 620 and 622 had a scan capability. When set in a scan mode, the radios automatically switched between BLM's channel 16 and the Kuna frequency, broadcasting whatever messages came over those channels, and allowing the occupants of the trucks to monitor both channels without having to manually operate the radio. If both channels were broadcasting at the same time, the Kuna frequency would "step on" BLM's channel 16, so that only the Kuna broadcast could be heard.
41. If the radios were not set on scan mode, the occupants could only hear the single frequency that they had manually chosen.
42. As 620 and 622 pulled away from the initial staging area, Captain Stear noticed that 620 had some loose gear on the back of the truck. He tried to reach 620 on the Kuna channel but 620 did not respond. This is some evidence that 620's radio was either not working properly or that 620 had manually selected the BLM channel, and had not put its radio on scan mode.

² While Chief Cromwell's squad car could tune into BLM channel 16, Chief Cromwell did not use that radio to monitor BLM channel 16 once he arrived back at the Kuna station house, as this exchange in his deposition shows:

Question [by Government counsel]: After you drove away from the fire scene, did you continue to-did you yourself monitor [BLM] channel 16 on your radio so you could sort of attempt to keep track of what was going on out there?

Answer [by Chief Cromwell]: No. When we got back to the fire station at that time, we didn't have [BLM channel] 16 in our bay station, and we had gotten out of the truck and went into the station and we were sitting outside in one of the bay doors watching and listening to conversation between our trucks. At that time we had no radio on that had BLM.

See Deposition of Cromwell at 104, 11. 11-21.

43. 620 and 622 proceeded south on Swan Falls Road, and reached the northeast perimeter of the fire at about 7:30 p.m.
44. 622 then contacted IC Kerby on BLM channel 16 and asked Kerby what they should do.
45. IC Kerby directed the Kuna RFD engines to "bump in behind" a BLM vehicle and work the northern perimeter of the fire. Another BLM vehicle would bring up the rear, sandwiching the two Kuna trucks.
46. The procession of these four vehicles began working the northern perimeter of the fire.
47. 622 and 620 applied water through the front bumper nozzles to the flames, and had an immediate effect—the flames diminished in the area where the trucks were working, and the smoke changed color indicating that the fire was being suppressed.
48. After moving a little more than a quarter mile in a westerly direction along the fire's northern perimeter, IC Kerby radioed 622 and told them to get closer to the perimeter, and that they should continue to proceed around the entire perimeter of the fire. Both trucks complied with those orders.
49. The trucks moved around the west side of the fire, and then proceeded east along the fire's southern perimeter.
50. At about 8:15 p.m., the procession had nearly circumnavigated the fire's entire perimeter, and had reached the fence at the southeast corner of the fire.
51. There, someone from one of the Kuna trucks asked BLM's Bryan Barney for further directions. Barney radioed IC Kerby who told them to turn around and return

around the fire's perimeter, soaking it down as they went. The procession complied, turned around, and started reworking the southern perimeter.

52. Just after 8:15 p.m., the National Weather Service called the BLM dispatch office and issued a red flag warning for the Snake River Valley area, including the area where the Point Fire was burning, warning of an approaching thunderstorm with accompanying winds of over 50 m.p.h.
53. At 8:22 p.m., the BLM dispatch office called IC Kerby over the BLM channel 16 and told him that a red flag warning had been issued by the National Weather Service and to expect high winds of up to 50 m.p.h.
54. IC Kerby felt that since the red flag warning had come over the BLM channel 16, all the firefighters had heard it and there was no need for him to ensure that everyone had heard the warning.
55. At the time of the red flag warning, 8:22 p.m., 620 and 622 were on the fire's southern perimeter traveling westerly, about a quarter-mile from the fence where they had turned around.
56. It is unclear if 620 heard the BLM dispatch's red flag warning message. The Kuna channel transcript shows that at 8:24 p.m., 620 radioed Captain McPherson on the Kuna channel and said: "[W]e're basically just doing mop-up. Is it okay for Josh to get some drive time just doing mop-up?" Captain McPherson said no, and 620 responded that they were "tucked in behind 622." If the times on the transcript and BLM dispatch log book are precise, then just two minutes after the red flag warning was given, Bill Buttram was obviously unconcerned and asking Captain McPherson to allow an unqualified beginning fireman to drive. This shows either that (1)

Buttram and Oliver did not hear the red flag warning, or (2) that they did not appreciate the seriousness of the red flag warning. If, however, the time on the logs are off by a minute or so, it is possible that Buttram was calling on the Kuna channel at the same time the red flag warning was given, in which case Buttram's transmission would "step on" the red flag warning coming from the BLM channel 16, if 620's radio was in a scan mode. In that case, 620 would not have heard the red flag warning. If Buttram's transmission "stepped on" the red flag warning, then 622 should not have heard the red flag warning either. Although Robert Black in 622 does not remember getting the red flag warning over their radio, Mike Law does think it came over the radio, although it is unclear whether he heard the BLM dispatch warning or a warning at a later time during a conversation with other employees. *See Law deposition at 73.* The evidence is inconclusive, and the Court can therefore not reach any definitive conclusion as to whether 620 heard the red flag warning.

57. After the red flag warning given at 8:22 p.m., 620 and 622 continued along the western perimeter.
58. When they reached the western perimeter, 622 ran out of the water. Black radioed IC Kerby on the BLM channel and asked for direction. IC Kerby told him to refill and stand by because a wind storm was to pass through.
59. Law testified that immediately after IC Kerby gave these orders, 620 came on the radio and stated that they still had water and would stay on the line. However, this testimony was contradicted by Law's partner, Black, who testified that it was his impression that 620 was empty and would be following 622 in to refill. Captain

Stear testified that when he saw 622 at the refill site, Black told him that 620 was right behind them coming in to refill. The Court finds Black's testimony most credible because he was the person operating the radio in 622, and because his account is corroborated. In addition, Law did not recall any such "we-will-stay-on-the-line" transmission from 620 in his deposition taken on March 3, 1998. It was not until he testified at trial, that Law gave that account. For these reasons, the Court finds that 620 never told 622 that they still had water and would stay on the fire line.

60. 622 then proceeded east through the black burned-out area until it turned north just before the fence in order to get to the fence break that was located at the northeast corner of the fire perimeter.
61. Just before 622 reached the fence break, 620 radioed 622 and stated that they were overheating and requested assistance. At this time, 620 did not appear to be in any distress. 622 responded that 620 should remove a screen on the front of the vehicle. 620 responded to the effect that they heard the message and would check the screen. That is the last radio contact 622 had with 620.
62. 622 proceeded through the fence and onto Swan Falls Road, stopping by the tender 625 to refill. Tender 625 was located at this time on Swan Falls Road at the southeast corner of the fire perimeter.
63. Black told Captain McPherson and Captain Stear that 620 was right behind them and coming in to refill.
64. When 620 did not arrive at the refilling site, captain McPherson started walking north on Swan Falls Road to look for the truck. When Captain McPherson had

reached the middle of the fire's eastern perimeter, he saw 620 in the black burned-out area heading towards him, retracing the route taken by 622. When McPherson first saw 620, it was about 600 feet away from McPherson, heading for the northeast perimeter of the fire with the apparent intent to follow 622's path through the break in the fence.

65. In a wildfire, any black burned-out area might be a safety zone depending on how much unburned fuel remains there; a lack of unburned fuel ensures that the area will not be burned over a second time. But the black's function as a safety zone is also dependant on two other variables: the wind, and the movement of the firefighters. A high wind will kick up dust and ash in the black area, obscuring visibility. This poses little danger if the black contains no unburned fuel and the firefighters are stationary. However, when the firefighters are moving in the black towards the perimeter of the fire, beyond which lies unburned fuel in the path of the high winds, the black is much less of a safety zone. The complete lack of visibility that accompanies high winds in the black makes the firefighters prey to disorientation, not a problem while they are sitting still, but a major concern when they are moving toward unburned fuels in the path of the winds.
66. McPherson felt that 620 was just minutes from reaching the fence break, and the truck was close enough that McPherson could see passenger Oliver "real well."
67. McPherson started walking toward the fence break with the idea that he would meet up with 620 there.
68. At this point the winds increased dramatically. Visibility in the black burnt-out area was reduced to almost nothing as the winds kicked up the dust and ash.

- 69.** 620, now close to the fence, turned north attempting to find the fence break.
- McPherson could hear 620 bouncing and moving north at a high rate of speed.
- 70.** Due to a combination of obscured visibility, disorientation, and panic, 620 overshot the fence break and drove into unburned cheat grass and sagebrush due north of the fire's northern perimeter.
- 71.** The winds revived the fire, pushing it northward at a furious rate.
- 72.** 620 was still moving northward at a fast rate, but it was now trying to outrun the fire that was close behind it. After driving about 1,750 feet from the fire's northern perimeter, 620 stalled in the middle of unburned cheat grass and sagebrush.
- 73.** Bill Buttram got on the radio and relayed a frantic message to Captain McPherson over the Kuna channel: "We're on the north line, Doyle, we got fire coming hard, this thing has died."
- 74.** Captain McPherson responded inaudibly, and Buttram said "it's not going to let us out of here."
- 75.** Chief Cromwell then came on the radio and asked 620 to identify its problem.
- 76.** Buttram responded that "We're surrounded by fire." When asked to repeat his message, Buttram stated "The truck has been overtaken by fire."
- 77.** That was the last radio communication anyone received from 620.
- 78.** Shortly thereafter, 620 was overtaken by the fire.
- 79.** Bill Buttram and Josh Oliver were found dead in the front seats of 620.
- 80.** At that time, 620 was located 713 feet west of Swan Falls Road and 1,750 feet north of the northern fire perimeter as it existed just prior to the fire's blow-up.

- 81.** About 25 minutes elapsed between the red flag warning given over the BLM channel at 8:22 p.m. and the high winds that swept through at 8:46 p.m.
- 82.** Joshua Oliver's mother, Darla Reber, was forty-one at the time of his death and she had a life expectancy at the time of thirty-two years.
- 83.** Plaintiff Michael Oliver was Joshua Oliver's father. Michael Oliver and Darla Reber divorced when Joshua was eleven years old. At that time, Michael moved to Illinois and Darla moved to New Mexico. Michael testified that Darla did not make it difficult for him to see or talk to Joshua, but nevertheless Michael rarely even spoke to Joshua during the next seven years. Joshua did come to live with Michael for a month in Illinois, and there were two other extended stays. In addition, Michael was always current on his support payments.
- 84.** Deanna C. Buttram and William Buttram were married on April 27, 1985, and thereafter resided as husband and wife. When William Buttram died, Deanna was 31 years old and their son Jeremiah R. Buttram was one year old.

LEGAL STANDARDS

- 85.** The plaintiffs--Joshua Oliver's father and mother and William Buttram's wife and son--brought this suit against the BLM under the Federal Tort Claims Act (FTCA).
- 86.** Under the FTCA, the Government is liable "in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 2674.
- 87.** Whether a private person would be liable under like circumstances is determined by application of "the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b).
- 88.** Because this case arose in Idaho, Idaho tort law will govern the result.

- 89.** Under Idaho law, a plaintiff must show the following by a preponderance of the evidence to prove negligence: (1) a duty, recognized by law, requiring a defendant to conform to a certain standard of conduct; (2) a breach of that duty; (3) a causal connection between the defendant's conduct and the resulting injuries; and (4) actual loss or damage. *See West v. Sonke*, 968 P.2d 228 (1998).
- 90.** Under Idaho law, an employer "has a duty to exercise reasonable care commensurate with the nature of its business in order to protect employees from hazards incident to the employment and to provide him with safe tools, appliances, machinery, and working places," although the employer has no duty to warn of a danger that was not reasonably foreseeable. *West*, 968 P.2d at 237.
- 91.** A danger is reasonable foreseeable if it "is apparent, or should be apparent, to one in the position of the actor. The actor's conduct must be judged in the light of the possibilities apparent to him at the time, and not by looking backward 'with the wisdom born of the event.'" W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 31, at 170 (5th ed. 1984). "In light of the recognizable risk, the conduct, to be negligent, must be unreasonable. No person can be expected to guard against harm from events which are not reasonably to be anticipated at all, or are so unlikely to occur that the risk, although recognizable, would commonly be disregarded." *Id.* "On the other hand, if the risk is an appreciable one, and the possible consequences are serious, the question is not one of mathematical probability alone It may be highly improbable that lightning will strike at any given place or time; but the possibility is there, and it may require precautions for the protection of

inflammables. As the gravity of the possible harm increases, the apparent likelihood of its occurrence need be correspondingly less to generate a duty of precaution." *Id.*

92. The term "proximate cause" means "a cause which, in natural or probable sequence, produced the damage complained of. It need not be the only cause. It is sufficient if it is a substantial factor concurring with some other cause acting at the same time, which in combination with it, causes the damage." *Fussell v. St. Clair*, 120 Idaho 591, 595, 818 P.2d 295, 298 (1991).
93. "There may be one or more proximate causes of an injury. When the negligent conduct of two or more persons contributes concurrently as substantial factors in bringing about an injury, the conduct of each may be a proximate cause of the injury regardless of the extent to which each contributes to the injury." *Idaho Jury Instructions* #230.
94. The comparative fault of a person or his legal representative which is as great as the comparative fault of the defendant bars recovery of damages for his death or injury. *See* Idaho Code § 6-801. Comparative fault which is not as great as the comparative fault of the defendant diminishes the damages allowed in proportion to the amount of comparative fault attributable to the person recovering. *Id.*
95. When the Court is apportioning negligence under the comparative fault provisions of § 6-801, it may include parties to the transaction which resulted in the injury, whether or not those parties are parties to the lawsuit. *See Pocatello Industrial Park Co. v. Steel West, Inc.*, 101 Idaho 783, 621 P.2d 399 (1980).
96. In an heir's action for wrongful death, the negligence of the decedent is imputed to the plaintiff. *See Adams v. Krueger*, 124 Idaho 74, 856 P.2d 864 (1993).

- 97.** The elements of damage in a death case are as follows: (1) the reasonable expenses incurred for the decedent's funeral; (2) the reasonable value of hospital/ambulance care received prior to decedent's death; (3) the reasonable value of the loss of decedent's services, comfort, society, and conjugal relationship, and the present cash value of such loss that is reasonably certain to occur in the future, taking into consideration the decedent's life expectancy and circumstances; and (4) the amounts decedent would have contributed to the support of plaintiff, and the present cash value of the amount of money decedent would have been reasonably certain in the future to have contributed to the support of plaintiff, taking into consideration decedent's life expectancy and circumstances. *See Idaho Jury Instructions 911-1.*
- 98.** Damages are not to be awarded for any grief or sorrow plaintiff may have suffered by reason of the death of decedent or for any pain or suffering of the decedent before he died. *See Idaho Jury Instructions 911-2.*
- 99.** In a parent's action for wrongful death of a child, the trier of fact may consider the parent's degree of intimacy with his/her child in setting damages. *See Gardner v. Hobbs*, 69 Idaho 288, 206 P.2d 539 (1949).
- 100.** Noneconomic damages are limited to \$400,000, plus the percentage amount by which the Idaho Industrial Commission adjusts the average annual wage. *See Idaho Code § 6-1603.*
- 101.** As of this date, the noneconomic damages cap under Idaho Code § 6-1603 is \$590,291.26.
- 102.** Under Idaho Code § 6-1603, the jury is not to be instructed on the statutory cap.
- The statute thus contemplates that a jury could award more than the cap. If the jury

also attributes fault to multiple defendants, or to the plaintiff and defendants, an issue arises as to whether that the verdict should be reduced to the cap amount first before the comparative fault reductions are made, or whether the comparative fault reductions should be made first, and if the verdict remains above the cap, only at that point reduce the verdict to the cap amount. The statute and the Idaho courts offer no guidance on this issue.³ The plaintiffs urge the Court to apply comparative fault before reducing any award to the cap amount, and they cite a Colorado Supreme Court decision in support of their argument. In *General Electric Company v. Niemet*, 866 P.2d 1361 (1994), five members of the Colorado Supreme Court interpreted a similar Colorado statute to require that the court reduce the verdict before applying the statutory cap. Two Justices dissented, finding that such a result would allow plaintiffs to get around the statutory cap when they were injured by multiple defendants. The Court finds that the dissent has the better of the argument. The majority opinion relies heavily on legislature history rather than the language of the statute. There is, however, no similar legislative history available concerning the Idaho statute. Instead, the Court is left with nothing but the language of Idaho Code § 6-1603. That language is intended to limit a plaintiff's recovery regardless of the number of defendants involved; there is no exception for cases where the plaintiff is injured by multiple defendants. Plaintiffs' interpretation, however, would essentially read such an exception into the statute. For example, if a victim is injured

³ The lack of Idaho case law interpreting this Idaho statute raises a question whether the issue should be certified to the Idaho Supreme Court. It would not make sense, however, to delay this decision to await an answer on certification. First, the Idaho Supreme Court will need this decision to place the issue in its proper context. Second, the parties are free to file a motion to reconsider after receiving this decision, and the Court can determine at that point whether the issue should be certified. The Court expresses no opinion at this point whether certification is appropriate.

by one defendant and has \$2 million in noneconomic damages, the victim would collect the statutory cap, \$590,291.26. If another victim with noneconomic damages of \$2 million is injured by two defendants, each 50% at fault, the Court would--under plaintiffs' proposal--apply the comparative fault first, reducing the award against each defendant to \$1 million, and would then apply the statutory cap, reducing each award to \$590,291.26, permitting the plaintiff a total recovery of over \$1 million. Thus, the plaintiff injured by two defendants would collect twice the cap amount. That result essentially places an exception in the statute that the legislature did not intend. The statute is a cap on the plaintiff's total recovery with no exceptions for multiple defendant cases. Thus, the Court rejects plaintiffs' interpretation of Idaho Code § 6-1603. *See General Electric*, 866 P.2d at 1369 (C.J. Rovira dissenting) (finding that the Colorado legislature could not have intended, in drafting a similar statute, to allow, "by the sheer fortuity of being injured by multiple defendants, one plaintiff [to] collect more damages than a second plaintiff with identical injuries who had the misfortune of being injured by only one person").

- 103.** Payments that Ms. Buttram received under Idaho's Workers' Compensation laws, the federal Social Security Administration benefit programs, and private life insurance, are not deductible under Idaho Code § 6-1606 as compensation received from collateral sources for personal injury.

ANALYSIS

Definition of BLM's Duty

- 104.** The BLM, through IC Kerby, had a duty to exercise reasonable care to protect Buttram and Oliver from foreseeable hazards incident to fighting the Point Fire.
- 105.** More specifically, the BLM had the following duties:
- 106.** First, the BLM IC had a duty to ensure that Buttram and Oliver were assigned duties commensurate with their ability and with the Kuna RFD's qualifications. This duty is imposed on the BLM in part due to its own regulation found in § 9215.11E of the BLM Manual on Fire Training and Qualifications. It is also imposed on the basis that the BLM IC had supervisory authority over Buttram and Oliver, and was in the best position to know of the fire's extent and dangers. When the BLM is fighting a fire on BLM property, the BLM IC has access to much more information about the fire than the volunteer firemen supplied by rural fire districts with limited budgets. On the other hand, the BLM IC will typically know little about the qualifications of the volunteers. If the BLM IC assigns tasks to volunteers with no consideration of whether the volunteers' qualifications are sufficient to safely perform the tasks, then the BLM IC has not complied with the general duty to provide for the safety of those volunteers. Thus, the BLM IC must make some determination about the volunteers' qualifications. At the same time, it must be recognized that the BLM IC is forced by the emergency nature of firefighting to make quick decisions. The BLM IC cannot be expected to conduct a sit-down interview with each volunteer, but must be allowed to rely on certain indicators of qualifications. In other words, the BLM IC complies with this duty when he or she makes reasonable assumptions

about the qualifications of volunteers based on the appearance and conduct of the volunteers, or other factors that bear on qualifications. However, when the BLM IC makes reasonable assumptions about volunteers' qualifications, rather than depending on actual knowledge, the BLM IC is thereafter operating under a relatively higher duty to provide for the safety of these volunteers. The level of duty varies on a sliding scale depending on the BLM IC's knowledge. The duty is at its highest when the BLM is making reasonable assumptions without any actual knowledge, and lessens as the BLM IC makes appropriate assignments based on actual knowledge of the qualifications. In the present case, the BLM IC's duty to provide for Buttram's and Oliver's safety was at the highest level because the BLM IC was proceeding on reasonable assumptions about their qualifications without having any actual knowledge.⁴

⁴ With the benefit of the trial evidence, the Court reaffirms its earlier summary judgment decision that the BLM IC's assumption that Buttram and Oliver were qualified to work the fire line in a brush truck was not a policy decision protected by the discretionary function exception. Based on the trial evidence, as set out in paragraphs 106 and 110 above, the Court will clarify its reasoning. In the summary judgment proceeding, the government argued that the BLM IC was entitled to assume qualifications of volunteers from the mere fact that they were dispatched by the rural fire district. The Court rejected that contention and found that the BLM IC was not entitled to make such assumptions under § 9215.11E. After hearing the trial evidence, the Court is now convinced that § 9215. 11E does permit the BLM IC to make certain reasonable assumptions based on outward indicators of the volunteers' qualifications. However, the Court continues to reject the BLM's contention that the mere dispatch of volunteers by a rural fire district to a BLM fire entitles the BLM IC to assume that the volunteers are qualified to do anything. Section 9215.11E clearly puts the responsibility on the BLM to either determine the volunteers' qualifications or make reasonable assumptions from outward indicators. The mere fact that volunteers were dispatched, standing by itself, is not a sufficient outward indicator on which to make any reasonable assumption. In this case, however, there was more than a mere dispatch of volunteers. As the Court will discuss in paragraph 110 above, Buttram and Oliver arrived in a brush truck, a vehicle designed to work directly on the fireline. The BLM IC therefore made a reasonable assumption that Buttram and Oliver were qualified to work the fire line. That decision was not a "legislative [or] administrative decision grounded in social, economic, [or] political policy" and hence was not protected by the discretionary function exception. *United States v. Gaubert*, 499 U.S. 315, 323 (1991).

107. Second the BLM IC has a duty to fully instruct rural fire district volunteers, before fire suppression efforts begin, about the nature of the fire, fuel conditions, weather information, safety reminders, command structure, and radio use. This information is crucial to provide for the volunteers' safety, especially when the IC is making assumptions about their qualifications without any actual knowledge. The BLM IC is in the best position to provide such information. In this case, IC Kerby had seen the fire from a helicopter, and could describe the nature and extent of the fire. He had information that the fuel conditions were incendiary. He had the most recent weather information from the National Weather Service that included a fire weather watch. He knew the common safety practices that should be reviewed even by highly trained firefighters. Specifically the existence of a fire weather watch made it imperative to review with the volunteers the significance of a red flag warning, and how the high winds that accompany such heavy weather would intensify the fire and obscure visibility. Briefing about the command structure was important, because the BLM IC knew he was working with volunteers from a rural fire district, and so needed to reduce any chance of confusion as to who was in charge. Finally, he knew the importance of everyone monitoring the same radio channel during a wildland fire where the firefighters are spread out over a large geographic area. IC Kerby had a duty to impart this information to the Kuna RFD firefighters before they started their suppression efforts.

108. Third, the BLM IC had a duty to (1) ensure that all firefighters heard the red flag warning that was issued at 8:22 p.m; (2) ensure that Kuna RFD volunteers understood the significance of that warning, i.e., that the high winds could

dangerously intensify the fire and substantially decrease the visibility; and (3) ensure that the RFD volunteers knew that the high winds would be coming immediately and from the south. The Government's own expert, Ronald Johnson, agreed that the BLM IC had a duty to ensure that the firefighters got the red flag warning. The two additional aspects of this duty (items (2) and (3) listed above) arise in this case largely because the BLM IC failed to hold a safety briefing before work began, and had no idea if the Kuna RFD volunteers knew what a red flag warning was.

- 109.** Fourth, the BLM IC had a duty after the red flag warning was issued to take all reasonable steps to ensure that 620 stayed away from the Point Fire's northern perimeter. Because he failed to hold an initial safety briefing, and knew nothing of Buttram's and Oliver's experience, the BLM IC had a special duty to Buttram and Oliver to warn them to stay away from the northern perimeter of the Point Fire because approaching high winds would drive the fire in that direction.

BLM's Breach of Duty

- 110.** BLM did not breach its duty to ensure that Buttram and Oliver were assigned to duties commensurate with their qualifications and the qualifications of the Kuna RFD. IC Kerby requested two brush trucks and a tender from the Kuna RFD. Buttram and Oliver responded to the fire in a brush truck. The brush truck is specifically designed to work the fire line. IC Kerby reasonably assumed that two Kuna volunteers driving a brush truck were qualified by Kuna RFD standards to work the fire line in that brush truck. It was also reasonable for IC Kerby to assume that the Kuna RFD had maintained 620 in a safe condition. However, that was all

IC Kerby could reasonably assume without further inquiry. In other words, IC Kerby could not assume from Buttram's and Oliver's appearance in the brush truck that they knew about (1) the Point Fire's nature and extent; (2) the most recent weather report; (3) fuel conditions; (4) safety guidelines; (5) who was in command; (6) what radio channel was being used; (7) that a red flag warning would mean the imminent approach of winds that would increase the intensity of the fire and obscure visibility.

111. The BLM IC breached his duty to hold a briefing on the issues listed in paragraph 107. IC Kerby held no briefing at all before assigning Buttram and Oliver to the fire line. Because IC Kerby was assuming that Buttram and Oliver were qualified without inquiring into their training or asking any questions about their equipment, it was especially important for IC Kerby to review all the issues listed in paragraph 107 before suppression efforts began.

112. The BLM IC breached his duty to (1) ensure that all firefighters heard the red flag warning that was issued at 8:22 p.m; (2) ensure that RFD volunteers understood the significance of that warning, i.e., that the high winds would dangerously intensify the fire and substantially obscure visibility; and (3) ensure that the RFD volunteers knew that the high winds would be coming immediately and from the south. Given the lack of any initial safety briefing, and the BLM IC's ignorance of the Kuna firefighters actual qualifications, it was especially important to ensure not only that the Kuna RFD firefighters heard the red flag warning but that they understood the significance of the warning. The BLM IC failed to comply with this duty.

113. The BLM IC breached his duty to warn Buttram and Oliver after the red flag warning to stay away from the fire's northern perimeter because high winds would drive the fire in that direction. Instead of so warning 620, the BLM IC instructed them to refill. He knew that to refill, 620 would most likely drive toward the fence break at the northeast corner of the fire. In other words, the BLM IC directed 620 toward the northern perimeter of the fire at a time when high winds were forecast to drive the fire in that very direction. As the Court discussed previously in paragraph 65, the black's function as a safety zone is partly dependent on whether the firefighters are moving through the black towards the unburned fuels that are in the path of oncoming winds. The BLM contends that IC Kerby gave 620 "the safe assignment of going to the road and staying there." *See BLM's Post-Trial Brief* at 11. The BLM asserts that "it does not make sense that [Buttram] would drive wildly around if he could not see at all." *Id.* From this, the BLM concludes there is no proof that the "BLM proximately caused Buttram to drive out of the safe zone and into harm's way." *Id.* The Court disagrees. At the time IC Kerby gave his refill order, it was foreseeable that the high winds could kick up the dust and ash in the black and completely obscure Buttram's and Oliver's visibility. It was also foreseeable that Buttram and Oliver would be very near the fire's northern perimeter -- and moving toward that perimeter--at the time the high winds were due to come through the area. Finally, it was foreseeable that the lack of visibility could cause panic and disorientation that would expose the firefighters to great risk because of their close proximity to the dangerous northern perimeter of the fire. By instructing

620 to refill, the BLM IC placed Buttram and Oliver in a foreseeably dangerous position, and thereby breached his duty to provide for their safety.

Definition of Kuna RFD's Duty

114. The Kuna RFD had a duty to exercise reasonable care to protect Buttram and Oliver from foreseeable hazards incident to fighting the Point Fire. This duty continued even after IC Kerby assigned duties to Buttram and Oliver and the two volunteers began working the fire line. While IC Kerby was the leader with primary responsibility, the Kuna RFD had a continuing responsibility to monitor its firefighters, warn them of dangers, and make recommendations to IC Kerby based on Kuna RFD's superior knowledge of Buttram's and Oliver's lack of experience. This duty arises because Captain McPherson sent 620, manned by two men experiencing their first fire season, to the BLM for duty assignment (1) without notifying the BLM IC that 620 was operated by rookies, (2) knowing that the BLM IC would have no time himself to inquire into Buttram's and Oliver's experience and training, and (2) knowing virtually nothing about the extent of the fire and the weather forecast. Under these circumstances, it was especially important that Chief Cromwell and Captain McPherson monitor the suppression efforts and the weather, so that they could suggest courses of action to IC Kerby that would ensure the safety of Buttram and Oliver.

115. More specifically, the Kuna RFD had the following duties:

116. First, the Kuna RFD had a duty to provide within reasonable limits the equipment necessary to ensure the firefighters' safety. Specifically, the Kuna RFD had a duty to provide adequate radios to its firefighters. Chief Cromwell knew that the Point

Fire was a grass/wildland fire, and that suppression efforts could spread his firefighters out to the point where they would be out-of-sight of leadership. Adequate radios were the only way that Chief Cromwell and Captain McPherson could comply with their duty to monitor their firefighters during the suppression efforts, as discussed above.

117. Second, the Kuna RFD had a duty to make personnel assignments that were designed to ensure the firefighters' safety. Specifically, the Kuna RFD had a duty to (1) send only qualified volunteer firefighters to fight any fire, and (2) to pair firefighters in two-person trucks in a manner that reasonably provided for the firefighters' safety.

118. Third, the Kuna RFD had a duty to obtain a weather report from the National Weather Service before proceeding to fight the Point Fire. Kuna RFD Assistant Chief Darwin Taylor testified that he believed that the National Weather Service Reports were only available to federal agencies, but he was mistaken--the un rebutted testimony of Richard Ochoa, a staff meteorologist for the National Weather Service, established that the National Weather Service reports would have been easily and immediately available to the Kuna RFD on July 28, 1995. These reports contained the most detailed weather information, and the testimony at trial established that such information is absolutely crucial to the safety of firefighters during wildland fires.

119. Fourth, the Kuna RFD had a duty to ensure that its firefighters received a briefing either by Kuna RFD personnel or BLM personnel--before suppression efforts began--about the nature of the fire, fuel conditions, weather information, safety

reminders, command structure, and radio use. This duty arises in part because Chief Cromwell and Captain McPherson knew that (1) the Point Fire was a wildland fire, (2) the Kuna RFD firefighters had received very little formal training on wildland fires, and (3) 620 was manned by two firefighters experiencing their first fire season.

- 120.** Fifth, the Kuna RFD had a duty to train its volunteer firefighters to fight wildland fires in a safe and effective manner. This duty arises because the main type of fire fought by the Kuna RFD in the time period of the Point Fire was the grassland/wildland type fire. This duty becomes particularly significant when the Kuna RFD elects to assign their volunteer firefighters to work with other agencies who will have no knowledge of the training that such firefighters possess.

Breach of Kuna RFD's Duty

- 121.** The Kuna RFD breached its continuing duty to ensure the safety of Buttram and Oliver during their suppression efforts. Chief Cromwell and Captain McPherson should have known that IC Kerby was unaware that Buttram and Oliver were rookies. Yet Chief Cromwell and Captain McPherson took no steps to inform IC Kerby of this fact. That failure would not necessarily have been negligent if Chief Cromwell and Captain McPherson had taken extra care to monitor Buttram and Oliver, and monitor any dangerous fire or weather conditions. Both Chief Cromwell and Captain McPherson recognized the importance of this monitoring when they testified that if they had known that high winds were approaching, they would have pulled 620 off the fire line. Yet despite recognizing the importance of monitoring, neither man monitored the BLM channel for warnings about dangerous

conditions. Thus, when the high wind warning was given over the BLM channel, neither Chief Cromwell nor Captain McPherson heard the warning. Captain McPherson had no capability to tune into the BLM channel; Chief Cromwell had the capability but failed to do so. The end result was that both men missed a crucial warning, and lost the opportunity to (1) recommend to IC Kerby that he put 620 in a safe zone, and (2) talk to Buttram and Oliver about the significance of the warning. These circumstances constitute a breach of Kuna RFD's continuing duty to ensure the safety of Buttram and Oliver during their fire suppression efforts.

- 122.** The Kuna RFD breached its duty to pair firefighters in two-person trucks in a manner that reasonably provided for the firefighters safety. Allowing two rookies to pair up is not necessarily a negligent decision if, for example, the rookies were operating a water tender far from the fire line. But here the rookies were operating a brush truck that was designed to work directly on the fire line. Captain McPherson had an opportunity at the initial staging site to switch Oliver and Black. That would have put a seasoned firefighter with a rookie in each truck. In addition, Assistant Chief Darwin Taylor, an experienced firefighter, was available to ride in 620, but was not used in that capacity. Thus, the Kuna RFD was not faced with a lack of resources that often, and understandably, plague small fire protection units. The Kuna RFD already had the resources--that is, experienced firefighters--but negligently failed to deploy them in a way that would ensure the safety of Buttram and Oliver. This was also not a situation where it was reasonable to assume that two rookies could work together because the fire presented little danger. In fact, Chief Cromwell knew almost nothing about the extent of the fire or the weather. He

also knew or should have known that Captain McPherson would be unable to monitor the BLM channel .⁵ Under these circumstances, it was unreasonable for the Kuna RFD to allow two rookies to operate 620. Thus, the Kuna RFD breached its duty to pair firefighters in two-person trucks in a manner that reasonably provided for the firefighters' safety.

123. The Kuna RFD breached its duty to obtain a weather report from the National Weather Service before proceeding to fight the Point Fire. The National Weather Service report was available but was not obtained by anyone from Kuna RFD.

124. The Kuna RFD breached its duty to train its volunteer firefighters to fight wildland fires in a safe and effective manner. Despite the fact that the main type of fire fought by the Kuna RFD was the grass/wildland fire, the Kuna RFD had only two training sessions in fighting these types of fires.

Definition of Buttram's and Oliver's Duty

125. Buttram and Oliver had a duty to exercise reasonable care to provide their own safety while fighting the Point Fire.

Buttram's and Oliver's Compliance With Their Duty

126. At the time the Point Fire Blew up at about 8:46 p.m., Buttram and Oliver were following directions. They were returning to Swan Falls Road to refill as directed by IC Kerby. Their conduct after the high winds started was a product of

⁵Chief Cromwell testified that he knew--before sending his firefighters to the Point Fire--that 625 had no BLM channel capability. He testified that he was not concerned, however, because 620 and 622 had BLM channel capability. But he should have known that Captain McPherson--his choice to be IC for the Kuna firefighters--would have no capability to monitor the BLM channel. While Captain McPherson rode to the fire in 620, nobody contemplated that he would operate as Kuna RFD IC in the cramped confines of 620, a truck designed for only two men. It was much more foreseeable that Captain McPherson would operate near tender 625, far from 620 and 622 working on the fire line.

disorientation and panic caused by the obscured visibility and fast-moving fire. At no time did Buttram and Oliver negligently fail to exercise reasonable care to provide for their own safety.

Causation

127. The BLM's negligence was a proximate cause of the deaths of Buttram and Oliver.

128. The Kuna RFD's negligence was a proximate cause of the deaths of Buttram and Oliver.

129. The negligence of the BLM and the Kuna RFD caused Buttram and Oliver to be near the northern perimeter of the fire at the time of the fire's blow-up. The fact that Buttram and Oliver were in this location at the time of the high winds was a substantial factor in their deaths.

130. The BLM's failure to hold an initial safety briefing, failure to explain the significance of the red flag warning, failure to warn 620 to stay away from the northern perimeter in combination with its refill instruction that directed 620 toward the fire's northern perimeter, were substantial factors in Buttram and Oliver being exposed to an unreasonable risk of danger that led to their deaths.

131. The Kuna RFD's failure to (1) ensure safety of Buttram and Oliver, (2) provide adequate equipment, (3) make safe personnel assignments, (4) obtain a weather report, (5) properly train Buttram and Oliver in wildland fire suppression safety, and (6) advise the BLM IC of Buttram and Oliver's limited training and experience, were substantial factors in Buttram and Oliver being exposed to an unreasonable risk of danger that led to their deaths.

Comparative Responsibility

- 132.** The BLM and the Kuna PFD were both responsible for the deaths. Each had knowledge the other lacked.
- 133.** The BLM knew a great deal about the fire but nothing about the experience and knowledge of Buttram and Oliver.
- 134.** The Kuna RFD knew a great deal about Buttram and Oliver but nothing about the fire.
- 135.** If either had shared its knowledge, this tragedy could have been avoided.
- 136.** Ultimately, the Kuna RFD was in the best position to use its knowledge to ensure the safety of Buttram and Oliver. The Kuna RFD's failure to do so was therefore the greatest contributing factor to the deaths.
- 137.** The Kuna RFD's decision to allow two rookies to operate a brush truck was the key threshold decision that set in motion the chain of events that would end in tragedy. By presenting the rookies to the BLM in a brush truck, the Kuna RFD was essentially vouching for their qualifications to work directly on the fireline--that is, after all, the purpose of the brush truck. Thereafter, knowing that the rookies would be in harm's way, the Kuna RFD never informed the BLM of their rookie status, or took the special care necessary to monitor their firefighting and the fire's condition. Of course, the BLM was also negligent because it had a special duty to monitor as well because it knew it had little knowledge of the Kuna RFD's qualifications, and no actual knowledge of the training, qualifications, and experience of the Kuna RFD firefighters assigned to the Point fire. The percentages of responsibility might be allocated equally if the failure to monitor was the only negligence. But the Kuna

RFD's pairing decision and its failure to advise the BLM IC of Buttram and Oliver's lack of training and experience, places more of the responsibility on the Kuna RFD.

- 138.** The Kuna RFD is therefore allocated 65% of the responsibility of the deaths and the BLM is allocated 35%.

Damages⁶

- 139.** Plaintiffs Deanna Buttram and Jeremiah Buttram have sustained economic damages in the amount of \$961,092. They have sustained damages for out-of-pocket funeral expenses in the amount of \$6,074. 85. Jeremiah Buttram has sustained damages for loss of society and companionship in the amount of \$900,000 that must be reduced to the statutory cap of \$590,291.26. Deanna Buttram has sustained damages for loss of consortium, society and companionship in the amount of \$900,000 that must be reduced to the statutory cap of \$590,291.26. The total damages sustained by Deanna Buttram and Jeremiah Buttram are \$2,147,749.37.
- 140.** Plaintiff Darla Reber has sustained damages for loss of the society and companionship of her son in the amount of \$300,000.

⁶The worth of a life cannot be set with mathematical precision. If it is our own life we are discussing, we would not give it up at any price. William Bradford, in writing of those who died during the crossing of the Mayflower, said that "the loss of honest and industrious men's lives cannot be valued at any price." Yet the law requires in this case that the Court, in determining the loss of society and companionship suffered by the plaintiffs, set a price on two men's lives, a nearly impossible task. With regard to the Buttrams, the Court did not attempt to make any distinction between the loss suffered by the wife and the loss suffered by the son. The Court started from the premise that their loss was clearly above the statutory cap and thus would eventually be reduced to the cap level, no matter where the figure was set initially. The Court then proceeded to approximate the loss of society and companionship by equating it roughly to the economic loss suffered by the family. With regard to Darla Reber, the Court took into account the very close bonds between Darla and Joshua, but also weighed in the balance the fact that Joshua was on his own and no longer a minor child. The award to Michael Oliver is explained in footnote 7.

- 141.** Plaintiff Michael Oliver has sustained damages for loss of the society and companionship of his son in the amount of \$50,000.⁷
- 142.** With regard to plaintiffs Deanna Buttram and Jeremiah Buttram, the BLM is liable in damages for 35 % of their total damages of \$2,147,749.37, or \$751,712.28.
- 143.** With regard to plaintiff Darla Reber, the BLM is liable in damages for 35% of her total damages of \$300,000, or \$105,000.
- 144.** With regard to plaintiff Michael Oliver, the BLM is liable in damages for 35% of his total damages of \$50,000, or \$17,500.
- 145.** The Court will issue a separate Judgement in accord with Federal Rule of Civil Procedure 58.

Dated this 19th day of February, 1999

B. LYNN WINMILL
UNITED STATES DISTRICT COURT

⁷ The issue of Michael Oliver's damages is a very difficult one for the Court. On the one hand there is evidence that Michael was estranged from his son. As discussed in the findings of fact, Michael went for many years without contacting Joshua. Michael's lack of contact appears to be the result of his own choice since he testified that Darla did not make it difficult for him to contact Joshua. On the other hand, Joshua did come to live with Michael for a month in Illinois, and there were two other extended stays. In addition, Michael was always current on his support payments. On the whole, however, an award of damages to Michael that comes anywhere near the award to Darla would ignore the plain fact that Darla raised Joshua for half of his life without any help from Michael, other than his financial assistance. In light of this, the Court decided to award Michael a sum that was substantially lower than that awarded to Darla Reber.